Reza Malek Zadeh Sahabali v Public Prosecutor

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COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPEAL NO B-05–140–06 OF 2012
BALIA YUSOF, AZIAH ALI AND ZAKARIA SAM JJCA
11 FEBRUARY 2014

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Criminal Procedure — Trial — Defence — Accused's contention he carried drugs under duress never raised during prosecution case or put to prosecution witnesses — Whether defence acceptable — Whether trial court rightly invoked presumption accused had possession and knowledge of drugs — Whether manner drugs concealed on person and brought into Malaysia constituted act of trafficking — Dangerous Drugs Act 1952 ss 2 & 37(d)

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The appellant, a foreigner, was sentenced to death by the High Court after it found him guilty of trafficking in 626g methamphetamine, an offence under s 39B(1)(a) of the Dangerous Drugs Act 1952 ('the DDA'). Acting on a tip-off, customs officers stopped and searched the appellant at the Kuala Lumpur International Airport and found he had six packets of the drug concealed inside two layers of underwear. The trial judge found the appellant had control and custody of the drug and deemed him to have possession and knowledge of it under s 37(d) of the DDA. The judge also found that the manner in which the drugs were concealed on his person and brought into the country, as well as the quantity of the drug involved, raised the inference that it was meant to be used for trafficking, as defined under s 2 of the DDA. In his appeal against conviction and sentence, the appellant said the trial judge failed to sufficiently consider the defence of duress — that the appellant did not carry the drugs voluntarily but that he was threatened by another person who travelled with him ('Ebrahim') that if he refused to transport the drugs his family would be harmed. The prosecution replied that the issue of duress was only raised during the defence's case and was never put to the prosecution's witnesses and that the trial judge did consider the issue and found it unacceptable.

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Held, dismissing the appeal and affirming the conviction and sentence:

(1) The issue of duress was not raised in the prosecution case. No question was put to the prosecution witnesses on that issue. If at all the appellant found himself under duress, he was the author of his own predicament. Because of the lure of 'good money' for transporting the packages to Malaysia, the appellant decided to take up the offer. He took a course of action from which he could not extricate himself (see para 16).

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(2) The evidence did not show the appellant had pointed to Ebrahim at the

time he was arrested; nowhere in his cautioned statement was Ebrahim mentioned. The court agreed with the trial judge's stand that the defence of duress and shifting of blame to another person was not an acceptable defence to justify the appellant's conduct (see para 16).

(3) The manner in which the drugs were concealed on the appellant pointed irresistibly to his knowledge of them. The white powder inside the packets was visible. As such, the trial judge did not err in applying s 37(d) of the DDA to presume the appellant knew that the packets contained the drugs. The appellant failed to rebut the s 37(d) presumption (see para 18).

(4) The appellant's act of carrying the drugs within two layers of underwear on his person from Syria to Malaysia sufficiently constituted 'trafficking' under s 2 of the DDA (see para 19).

(5) The defence failed to raise a reasonable doubt on the prosecution case. There was sufficient evidence to support the trial judge's finding that the appellant was guilty as charged (see para 20).

[Bahasa Malaysia summary

Perayu, orang asing, dijatuhkan hukuman mati oleh Mahkamah Tinggi selepas mendapati dia bersalah mengedar sebanyak 626g methamphetamine, kesalahan di bawah s 39B(1)(a) Akta Dadah Berbahaya 1952 ('ADB'). Bertindak atas petunjuk, pegawai-pegawai kastam menahan dan memeriksa perayu di Lapangan Terbang Antarabangsa Kuala Lumpur dan mendapati dia mempunyai enam paket dadah yang disembunyikan di dalam dua lapisan pakaian dalam. Hakim perbicaraan mendapati perayu mempunyai kawalan dan jagaan terhadap dadah tersebut dan menganggap dia mempunyai milikan dan pengetahuan terhadapnya di bawah s 37(d) ADB. Hakim juga mendapati bahawa cara di mana dadah tersebut disembunyikan pada dirinya dan dibawa masuk ke dalam negeri, juga kuantiti dadah yang terlibat, membangkitkan inferens bahawa ia bertujuan untuk digunakan untuk pengedaran seperti yang didefinisikan di bawah s 2 ADB. Dalam rayuannya terhadap sabitan dan hukuman, perayu menyatakan hakim perbicaraan gagal untuk mempertimbangkan dengan wajar pembelaan dures — bahawa perayu tidak membawa dadah tersebut secara sukarela tetapi dia diugut oleh orang lain yang melancong dengannya ('Ebrahim') bahawa jika dia menolak daripada membawa dadah tersebut keluarganya akan dicederakan. Pihak pendakwaan menjawab bahawa isu dures hanya dibangkitkan semasa kes pembelaan dan tidak pernah diajukan kepada saksi pihak pendakwaan dan hakim perbicaraan telah mempertimbangkan isu tersebut dan mendapatinya tidak boleh diterima.

Diputuskan, menolak rayuan dan mengesahkan sabitan dan hukuman:

(1) Isu dures tidak dibangkitkan di dalam kes pihak pendakwaan. Tiada soalan telah diajukan kepada saksi pihak pendakwaan atas isu tersebut.

Jika pun perayu mendapati dirinya di bawah dures, dia adalah pembuat kesusahannya sendiri. Disebabkan oleh umpanan 'good money' untuk membawa paket-paket dadah ke Malaysia, perayu memutuskan untuk menerima tawaran tersebut. Dia telah mengambil tindakan sedemikian yang mana dia tidak dapat membebaskan dirinya (lihat perenggan 16).

(2) Keterangan tidak menunjukkan perayu telah menunjuk kepada Ebrahim pada masa dia ditangkap; tiada di mana-mana dalam penyataan amarannya bahawa Ebrahim disebut. Mahkamah bersetuju dengan pendirian hakim perbicaraan bahawa pembelaan dures dan mengalihkan kesalahan kepada orang lain pembelaan yang tidak boleh diterima untuk menjustifikasikan tindakan perayu (lihat perenggan 16).

(3) Cara di mana dadah tersebut disembunyikan pada diri perayu mengarahkan tanpa dapat ditahan kepada pengetahuannya terhadap dadah tersebut. Serbuk putih di dalam paket dapat dilihat. Dengan itu, hakim perbicaraan tidak tersilap dalam mengguna pakai s 37(d) ADB untuk menganggap perayu mengetahui bahawa paket-paket tersebut mengandungi dadah. Perayu gagal untuk mematahkan anggapan s 37(d) (lihat perenggan 18).

(4) Tindakan perayu membawa dadah tersebut dalam dua lapisan pakaian dalam terletak pada dirinya dari Syria ke Malaysia dengan mencukupi membentuk 'trafficking' di bawah s 2 ADB (lihat perenggan 19).

(5) Pembelaan gagal untuk membangkitkan keraguan yang munasabah ke atas kes pihak pendakwaan. Terdapat keterangan yang mencukupi untuk menyokong dapatan hakim perbicaraan bahawa perayu bersalah seperti yang dituduh (lihat perenggan 20).]

Notes

For cases on defence, see 5(2) *Mallal's Digest* (4th Ed, 2014 Reissue) paras 5461–5472.

Cases referred to

Emmanuel Yaw Teiku v PP [2006] 5 MLJ 209; [2006] 3 CLJ 597, FC (refd)

Mat v PP [1963] 1 MLJ 263 (refd)

Mohamad Yazri bin Minhat v PP [2003] 2 MLJ 241; [2003] 2 CLJ 65, CA (refd)

PP v Hla Win [1995] 2 SLR 424, CA (refd)

PP v Lim Hock Boon [2009] 3 MLJ 604; [2009] 3 CLJ 430, FC (refd)

PP v Ong Lock Soon [2006] MLJU 462; [2006] 8 CLJ 482, HC (refd)

Suheri Ibrahim v PP [2013] 3 CLJ 676; [2012] 1 LNS 624, CA (folld)

Wjchai Onprom v PP [2006] 5 MLJ 415; [2006] 3 CLJ 724, CA (refd)

Legislation referred to

Dangerous Drugs Act 1952 ss 2, 37(d), 39B(1)(a), B(2)

Appeal from: Criminal Trial No 45A-7 of 2011 (High Court, Shah Alam)

Afifuddin bin Ahmad Hafifi (Salehuddin Saidin & Associates) for the appellant.
Ahmad bin Bache (Deputy Public Prosecutor, Attorney General's Chambers) for the respondent.

Aziah Ali JCA (delivering judgment of the court):

[1] The appellant was charged with an offence under s 39B(1)(a) of the Dangerous Drugs Act 1952 as follows:

> Bahawa kamu pada 22 Julai 2010, lebih kurang jam 10.50 malam di Cawangan Pemeriksaan Penumpang 1 (CPP1), Balai Ketibaan Antarabangsa, Terminal Utama Lapangan Terbang Antarabangsa Kuala Lumpur, di dalam Daerah Sepang, dalam Negeri Selangor Darul Ehsan, telah didapati mengedar dadah berbahaya iaitu Methamphetamine anggaran seberat 626 gram, dan dengan itu kamu telah melakukan suatu kesalahan di bawah seksyen 39B(1)(a) Akta Dadah Berbahaya 1952 yang boleh dihukum di bawah seksyen 39B(2) Akta yang sama.

[2] The High Court found the appellant guilty as charged and convicted him. He was sentenced to death, hence this appeal.

[3] We have considered the appeal records and the submissions of learned counsel for the appellant and learned deputy public prosecutor ('DPP'). We find no merit in the appeal. We therefore dismissed the appeal and affirmed the conviction and sentence. We now give our reasons below. For the purpose of this judgment we reproduce the background facts as adduced by the prosecution.

THE PROSECUTION CASE

[4] The facts are fairly straightforward. On 22 July 2010 SP3, Rozili Che Su, a customs officer stationed at the Kuala Lumpur International Airport ('KLIA') received a call from senior customs officer SP5, Elangovan a/l Rethnasamy who instructed him to look out for an Iranian passenger who is suspected of carrying some prohibited substance. Together with a colleague Halimi Hamid, SP3 then went to look for the suspect passenger. SP3 found the person, identified as the appellant, at exit gate No 3. The appellant walked out and SP3 approached the appellant, identified himself as a customs officer and asked for his passport. He then asked the appellant to follow him back into the terminal building. SP3 then informed Halimi that he had found the appellant. SP3 then contacted

SP5 who asked him to take the appellant to office of the 'Cawangan Pemeriksaan Penumpang 1'. There SP3 handed over the appellant to SP5. SP3 also handed over the appellant's passport to SP5.

[5] SP5 asked the appellant to open a black sling bag (exh P12) that the appellant was carrying but nothing incriminating was found in the bag. SP5 then searched the appellant's body and felt something concealed in his underwear. He asked the appellant to remove his underwear. SP5 saw that the appellant was wearing a tight brief (exh P16). He asked the appellant to remove the brief and SP5 saw something concealed inside the appellant's underwear (exh P17). SP5 then contacted the narcotics office and two narcotics officers, identified as Mohamad Nor (SP6) and Oliver Tong, came. SP5 directed the appellant to put on his underwear again. SP5 instructed SP2 to take photographs (exh P8A–8F). Then the appellant was instructed to remove the tight brief and then his underwear. Inside his underwear SP5 found 2 packets at the front (exh P18A and P18B), two near the appellant's genitals (exh P18C and P18D) and two at the rear near his buttocks (exh P18E and P18F). SP2 took a total of 13 photographs (exh P8A-M at pp 151–163 of the appeal record). SP5 marked all the exhibits. According to SP5 each packet contained white crystal powder. Using a test kit he conducted tests on each packet and found the result tested positive for methamphetamine. SP5 then took possession of the following exhibits from the appellant:

(a) a boarding pass from Damascus to Doha (exh P21);

(b) a boarding pass from Doha to Kuala Lumpur (exh P22);

(c) an e-ticket (exh P23);

(d) an Iran Air ticket for Damascus to Teheran (exh P24);

(e) a departure card (exh P25);

(f) USD600 cash (exh P26A-F).

[6] The exhs P21 to P25 all bore the appellant's name. SP5 then prepared a search list (exh P27). Both SP5 and the appellant signed P27. He handed over the appellant and the exhibits to SP6 Mohamad Nor Mohd Ahad. SP6 then contacted the investigating officer ('IO') SP7 Wee Sew Hin who instructed SP6 to take the appellant and the exhibits back to their office at Nilai. At the office, SP6 handed over the appellant and the exhs to SP7 and both SP6 and SP7 signed *Borang Penyerahan Barang-Barang Kes* (exh P29). SP7 later prepared search list (exh P30) which was signed by SP6, SP7 and the appellant. At the Nilai office SP7 kept the exhibits in a locked steel cabinet. He kept the key. On 27 July 2010 SP7 instructed SP2 to take photographs of the exhibits (exh P9 (A-F)). SP7 handed over the exhibits to the chemist, SP4 Maimonah Sulaiman who acknowledged receipt (exh P14). SP4 analysed the contents of the six

packets and found them to contain a total of 626g of methamphetamine. SP4 prepared a report of the result of her analysis (exh P15). According to SP5 another Iranian man was also detained together with the appellant but a search of his body and bag revealed no incriminating substance. SP5 then released this person whose name he could not remember.

[7] At the end of the prosecution case the learned trial judge found that at the time of his arrest, the appellant had control and physical custody of the six packets. Relying on the authorities of *Mohamad Yazri bin Minhat v Public Prosecutor* [2003] 2 MLJ 241; [2003] 2 CLJ 65; *Wjchai Onprom v Public Prosecutor* [2006] 5 MLJ 415; [2006] 3 CLJ 724 and *Public Prosecutor v Lim Hock Boon* [2009] 3 MLJ 604; [2009] 3 CLJ 430, His Lordship found that the amount of drugs involved shows that the drugs were not for personal consumption. On the issue of knowledge and possession His Lordship relied on s 37(d) of the Act and said as follows (p 125 of the appeal record):

> Menurut keterangan pihak Pendakwaan, OKT ditangkap sememangnya semasa ada kawalan dan milikan fizikal keatas semua bungkusan dadah itu (P19A-P19F). Di bawah seksyen 37(d), Akta Dadah Berbahaya 1952, OKT adalah 'deemed to have in his possession of the drug and to have known the nature of such drug until the contrary is proved'.

[8] His Lordship further found that the manner the drugs were concealed and brought into this country raises the inference under s 2 of the Act that the appellant was trafficking in the drugs.

[9] Section 2 of the Act provides that 'trafficking' includes the doing of any of the following acts, that is to say, manufacturing, importing, exporting, keeping, concealing, buying, selling, giving, receiving, storing, administering, transporting, carrying, sending, delivering, procuring, supplying or distributing any dangerous drug otherwise than under the authority of this Act or the regulations made under the Act. His Lordship said as follows (p 128 of the appeal record):

> Dalam hal keadaan fakta perbuatan OKT membawa masuk ke Negara ini dadah Methamphetamine sejumlah 626 gram yang banyak lagi tersorok rapi dalam seluar dalamnya, memanglah perbuatan yang boleh memberi inferen yang ia dilakukan bagi tujuan mengedar dan tentu sekali bukan untuk kegunaan sendiri.

At p 130 His Lordship said:

> Di peringkat kes pendakwaan, tidak terdapat apa-apa keterangan yang menunjukkan bahawa Methamphetamine itu adalah untuk kegunaan OKT sendiri. la tidak munasabah pun Methamphetamine seberat 626 gram adalah untuk kegunaan OKT sendiri. Mahkamah membuat pendapat bahawa berdasarkan kepada cara dadah Methamphetamine disembunyi dan dibawa masuk dalam

kuantiti yang banyak itu, maka hanya satu inferen yang boleh dibuat iaitu ia adalah untuk tujuan pengedaran seperti mana yang termaktub tafsirannya di bawah seksyen 2, Akta Dadah Berbahaya 1952.

The learned judge found that the prosecution has adduced sufficient evidence to establish a prima facie case of trafficking under s 2 of the Act and the appellant was called upon to enter his defence

THE DEFENCE CASE

[10] The appellant's defence is essentially based on duress and absence of knowledge that the substance he was carrying were dangerous drugs. According to him his mother was sick and because of that he needed money. He was persuaded by his colleague by the name of 'Hamid' to take an easy job and easy money. According to Hamid, this job is transporting packages to some people in Malaysia for which they pay good money (see p 61 of the appeal record). He said he resisted the offer but a few months later he accepted the offer because he needed the money. Hamid asked him to go to the terminal where one 'Nasir' will contact him. At the terminal he was with another person by the name of 'Mansur'. Mansur is the appellant's friend who had also agreed to do the same job. Nasir gave both the appellant and Mansur flight tickets, passports and cash USD700 each for travel expenses. They were instructed to go to Syria where someone will meet them at a hotel called 'Hotel Imam Hossein'. At the hotel in Syria a person whom they got to know as 'Ebrahim Khairandish' came to meet them and they were given some packets. Mansur asked Ebrahim to open the packets but he did not. They then said that they did not want to go to Malaysia and Ebrahim became angry and asked for a refund of the travel expenses and also threatened to harm their families. The appellant said they had no choice and agreed to come to Malaysia. Ebrahim then gave them underwear and instructed them how to place the packets inside the underwear. Each of them were given six packets. From Syria they flew to Doha and from there they flew to Malaysia. According to the appellant, Ebrahim also came together with them. The arrangement was that if they got separated at KLIA, they would meet at the main gate near the taxis.

[11] At the KLIA, Mansur was in a different queue at the immigration check point and had passed earlier. After the appellant and Ebrahim had passed the immigration check point, the appellant said that a person approached him and Ebrahim and both he and Ebrahim were then taken to a room. There their bags were searched and when his body was searched, the drugs were found. According to the appellant he had pointed to Ebrahim to indicate that Ebrahim was in charge. The appellant denied that he knew the contents of the packets.

[12] The learned judge considered the defence and with regard to knowledge

of the contents of the packets, His Lordship referred to the appellant's testimony as follows (p 58 of the appeal record):

> I came to know the real contents of packages in the said Hotel Imam Hossein in Syria when my friend Mansur asked Ebrahim of the contents of the packages and also when Ebrahim asked us to hide in my underwear. *That was the time I realised that the contents were dangerous.* (Emphasis added.)

[13] In finding that the appellant has failed to rebut the presumption of knowledge, His Lordship relied on the concept of wilful blindness alluded to by Yong Pung How CJ (Singapore) in his dissenting judgment in the case of *Public Prosecutor v Hla Win* [1995] 2 SLR 424. In that case Yong Pung How CJ observed that an accused person who accepted the goods in circumstances where it is imperative that he takes the precaution to satisfy himself that the goods were what they were purported to be, but did not take the trouble to inspect them and merely relied on another person's assurance that the goods were what they were purported to be, then he would not have rebutted the statutory presumption of knowledge. He would be guilty of wilful blindness to the obvious truth of the matter. His Lordship said as follows:

> At this juncture, I emphasize that where the accused, who is not an innocent custodian in the sense that the drugs were planted in his bag without his being aware of them, accepted the goods in circumstances which rendered the taking of the precaution of satisfying himself that the goods were what they purported to be and were not drugs an imperative, then, if he did not take the trouble to inspect them, but merely relied on another person's assurance, he would not rebut the statutory presumption of knowledge. In fact, he would be guilty of wilful blindness to the obvious truth of the matter.
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> In the end, the finding of the mental state of knowledge, or the rebuttal of it, is an inference to be drawn by a thai Judge from all the facts and circumstances of the particular case, giving due weight to the credibility of the witnesses.

Yong Pung How CJ referred to *Glanville Williams' Textbook on Criminal Law* at p 125 as follows:

> As Professor Glanville Williams aptly remarked in his *Textbook on Criminal Law*, at p 125:
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> … the strict requirement of knowledge is qualified by the doctrine of wilful blindness. This is meant to deal with those whose philosophy is: Where ignorance is bliss, 'tis folly to be wise.' To argue away inconvenient truths is a human failing. If a person deliberately 'shuts his eyes' to the obvious, because he 'doesn't want to know,' he is taken to know.

[14] With regard to the alleged threat from Ebrahim which is the premise for the appellant's defence of duress, His Lordship found the alleged threat could

not be accepted and does not justify the appellant's act in light of the fact that he knew that the packets contained illicit drugs. Having considered the aforementioned facts and the law, His Lordship applied the test in *Mat v Public Prosecutor* [1963] 1 MLJ 263. His Lordship was satisfied beyond reasonable doubt of the appellant's guilt and found that the defence has failed to raise a reasonable doubt in the prosecution case. Accordingly the learned judge found the appellant guilty as charged and convicted and sentenced him to death.

THE APPEAL

[15] Learned counsel submits that the learned judge has failed to sufficiently appreciate the appellant's defence of duress. It is submitted that the threat against the appellant was imminent and continuing until he reached KLIA because the person who had threatened the appellant was with him at the time of his arrest. The appellant did not carry the drugs voluntarily. The actual trafficker is Ebrahim. It is submitted that the learned judge was more concerned with the element of knowledge. Learned counsel submits that the issue of knowledge is irrelevant in determining whether duress is acceptable as a defence. Learned counsel submits that the failure of the learned judge to sufficiently evaluate this evidence amounts to a misdirection. Learned DPP on the other hand submits that the learned judge did consider the appellant's defence of duress and shifting the blame to another person and found that this defence to justify his act is not acceptable. Further the defence of duress was only raised in the defence case and was not put to the prosecution witnesses. Learned DPP submits that if it was true that there was duress, the appellant could have told this to the customs officer at the first opportunity. We agree with learned DPP.

[16] We have perused the notes of evidence and agree with learned DPP that the issue of duress was not raised in the prosecution case. No question was put to the prosecution witnesses on this issue. With regard to learned counsel's submissions on the 'imminent and continuing' threat against the appellant which gave rise to the defence of duress, the evidence shows that the appellant had initially declined the offer by his colleague 'Hamid' to do 'an easy job and easy money'. This 'easy job' is to transport packages to some people in Malaysia for which they pay good money (p 61 of the appeal record). This shows that even at this early stage the appellant appears to harbour some misgiving about the offer. However, later he decided to accept the offer because he said Hamid kept insisting and because he needed the money. Thus despite his earlier misgivings, the appellant made the decision to take up the offer. This decision was his alone. The lure was the 'good money'. He then went to the airport to meet Nasir and then proceeded to Syria together with Mansur. We are of the view that, if at all the appellant found himself under duress, he was the author of his own predicament. He decided to take a course of action from which he

found he could not extricate himself. The appellant said that at the time he was arrested, he had pointed to Ebrahim. But the evidence did not show that he did that and this issue was never put to SP3. Instead, according to SP3 the appellant was seen walking about near exit gate No 3. We agree with learned DPP that nowhere in the appellant's cautioned statement (exh D31) is Ebrahim mentioned. In fact, the cautioned statement shows that the appellant came to Malaysia with Mansur only. We agree with the learned judge that the defence of duress and shifting the blame to another person is not a defence that is acceptable to justify the appellant's conduct. In the circumstances we find that the learned judge has not erred in rejecting the defence of duress.

[17] Next, it is submitted by learned counsel that the learned judge has erred in inferring knowledge because there is an express admission by the appellant that he knew that he was carrying prohibited substance. It is submitted that an inference of knowledge cannot be raised where there is an express admission. On this issue we reproduce the appellant's testimony at p 58 of the appeal record as follows:

> I don't know what were in the packages.
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> I came to know the real contents of packages in the said Hotel Imam Hossein in Syria when my friend Mansur asked Ebrahim of the contents of the packages and also when Ebrahim asked us to hide in my underwear. That was the time I realised that the contents were dangerous.

At p 64 of the appeal record the appellant said:

> We asked and he said they were not dangerous things. Mansur asked to open them.
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> He told us from the beginning to take the packets to Malaysia.
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> He told us where to place the packets in the underwear that he wanted us to wear.
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> Then we knew that it was dangerous to do as told.

At p 66 of the appeal record it was put to the appellant that he knew that the packets contained drugs and that was why he hid them in his underwear. The appellant denied. At p 68 again he denied that he knew the contents of the packets. It is therefore obvious that contrary to the submissions of learned counsel, the appellant did not make any admission that he knew the nature of the contents in the packets.

[18] In the case of *Suheri Ibrahim v Public Prosecutor* [2013] 3 CLJ 676; [2012] 1 LNS 624 the facts show that a body search was conducted on the appellant and a packet of compressed leaves wrapped in aluminium foil and plastic wrapping was found hidden in front of the appellant's trousers near the appellant's navel. The central issue was whether the appellant was found 'in possession'. In his judgment Clement Skinner JCA said as follows:

> The fact that the package was found hidden in the front of the appellant's trousers indicates that he was trying to conceal what he was carrying. Logically speaking, there was no reason for the appellant to want to hide the package he was carrying because its contents were not visible from the outside. The proper inference to be drawn from his having done so is that he wanted to avoid detection of the package he was carrying — he wanted to avoid detection of the package as he knew something about the contents of the package which another person looking at the package would not know, namely that it contained prohibited drugs — hence the appellant's act of concealing the package in his trousers. He was accordingly not an innocent carrier.

We respectfully adopt a similar approach. The manner in which the six packets were concealed pointed irresistibly to his knowledge of the nature of that white powder in the said packets (see *Public Prosecutor v Ong Lock Soon* [2006] MLJU 462; [2006] 8 CLJ 482). Apart from the manner of concealment, the white powder inside the packets were visible. In the circumstances we are of the view that the learned judge has not erred in applying s 37(d) to presume that the appellant had knowledge that the six packets contained dangerous drugs. On the evidence we find that the defence has failed to rebut the presumption.

[19] Further, we agree with the learned judge that the appellant was 'trafficking' as defined under s 2 of the Act. We refer to the oft-cited case of *Wjchai Onprom v Public Prosecutor*. In that case two packets containing dried leaves were found attached by cello tape to the appellant's t-shirt. Subsequent examination by the government chemist revealed that the packets found on the accused person contained 1,214g of cannabis. The court said as follows:

> … in s 2, such possession must be accompanied by some overt act on the part of the accused to be able to constitute trafficking.
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> Here the appellant was caught conveying a very large quantity of cannabis from Thailand to Malaysia. In view of the amount involved, it is safe to infer that the drug was intended for a third person or persons, known or unknown. That other person or persons may, to borrow Lord Diplock's words, be 'the actual consumer or a distributor or another dealer'. So this is not a case of mere passive possession. There were overt acts done by the appellant, namely the active concealment of the drug on his person followed by its conveyance from Thailand into Malaysia which reasonably supports the existence of criminal purpose proscribed by the Act. We may add that the very same facts also give rise to a strong inference that the appellant was aware of his possession, knew the nature of the drug possessed and had the power of disposal over it. So much for the prima facie proof of actual trafficking.

Similarly in the present case the appellant had carried the packets of drugs from Syria into Malaysia on his body concealed inside two layers of underwear. The overt acts done by the appellant of concealing the drugs on his person and conveying them from Syria to Malaysia are sufficient to constitute 'trafficking' under s 2 of the Act.

[20] Proof of intention or knowledge is generally inferred from proved facts and circumstances (*Emmanuel Yaw Teiku v Public Prosecutor* [2006] 5 MLJ 209; [2006] 3 CLJ 597, (FC). The present appeal is substantially factual. The learned judge has considered and evaluated the evidence before him and found that the defence has failed to raise a reasonable doubt in the prosecution case. We find no error that warrants appellate intervention. In any case, an appellate court should be slow in interfering with the trial judge's findings of fact. On the totality of the evidence we are of the view that there is sufficient evidence to support the findings of the learned judge that the appellant is guilty as charged. Accordingly we dismiss the appeal and affirm the conviction and sentence.

Appeal dismissed and conviction and sentence affirmed.

Reported by Ashok Kumar